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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/710,972

08/16/2004

Lynn Henry Wheeler

10399-40260

4971

24728

7590

11/07/2006

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EXAMINER

ZAND, KAMBIZ

ART UNIT

PAPER NUMBER

2132

DATE MAILED: 11/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/710,972

Applicant(s)

WHEELER ET AL

Examiner

Kambiz Zand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

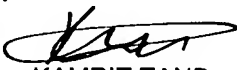
## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
KAMBIZ ZAND  
PRIMARY EXAMINER

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

1. Claims 1-44 have been examined.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,820,202. Although the conflicting claims are not identical, they are not patentably distinct from each other because : Claim(s) 1-4 of patent # 6,820,202 contain(s) every element of claim(s) 1-4 of the instant application and as such anticipate(s) claim(s) 1-4 of the instant application.

The deletion of "digital signature" and "hash" from step c (ii) of patent claims 6, 820, 202 and replacement of those with broad limitation of encoding using the public/private key pair only anticipate such claims by the claims of the above patent since the use of digital signature, hashing is an act of encoding where decryption is done by using the public key.

Dependent claims 5-44 also anticipated by the dependent claims of the patent claims above since the claims 5-37 of the patent contain multiple dependent claims addressing the same limitations.

A full detail comparison would be provided upon finality of double patenting rejection.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " **ELI LILLY AND COMPANY v BARR LABORATORIES, INC.**, United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

4. Claims 1-4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No.

6,820,199. Although the conflicting claims are not identical, they are not patentably

distinct from each other because : Claim(s) 1-4 of patent

# 6,820,199 contain(s) every element of claim(s) 1-4 of the instant application and as such anticipate(s) claim(s) 1-4 of the instant application.

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The deletion of "digital signature" and "hash" from step c (ii) of patent claims 6, 820, 199 and replacement of those with broad limitation of encoding using the public/private key pair only anticipate such claims by the claims of the above patent since the use of digital signature, hashing is an act of encoding where decryption is done by using the public key.

Dependent claims 5-44 also anticipated by the dependent claims of the patent claims above since the claims 5-37 of the patent contain multiple dependent claims addressing the same limitations.

A full detail comparison would be provided upon finality of double patenting rejection.

- Replace phrase « Claim » with phrase « claim » line 1.
  - Replacement of "a" line 5 with "the" in the phrase "a right".
  - Replacement of "the" (line 6, first occurrence) with "a" in the phrase "the link".
  - Deleting the phrase "old" (line 6; line 7).
  - Insert phrase "new" after the phrase "selected" (line 7).
  - Replacement of "the" (line 7, second occurrence) with "a".
- OK and*

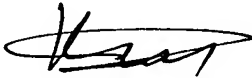
### Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: please see enclosed PTO-892.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kambiz Zand whose telephone number is (571) 272-3811. The examiner can normally be reached on Monday-Thursday (8:00-5:00).  
If attempts to reach the examiner by telephone are unsuccessful, the examiner's

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supervisor, Gilberto Barron can be reached on (571) 272-3799. The fax phone numbers for the organization where this application or proceeding is assigned as (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
KAMBIZ ZAND  
PRIMARY EXAMINER

11/06/006

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